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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Kay Yut Chen et al.	§	Art Unit:	3692
		§		
Serial No.:	09/858,251	§		
		§	Examiner:	Siegfried E. Chencinski
Filed:	May 15, 2001	§		
		§		
For:	An Automated Decision	§	Atty. Dkt. No.:	10014416-1
	Support System for Designing	§		(HPC.0331US)
	Auctions	§		

**Mail Stop Petition**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION PURSUANT TO 37 C.F.R. § 1.181 REGARDING THE NOTIFICATION  
OF NON-COMPLIANT APPEAL BRIEF (37 C.F.R. 41.37) DATED AUGUST 13, 2007**

Dear Sir:

On August 13, 2007, a Notification of Non-Compliant Appeal Brief (37 C.F.R. § 41.37) was issued by the Examiner. The Notification marked box 4 as being the alleged defect of the Appeal Brief. More specifically, the Notification made the following statement:

The brief fails to comply with above paragraph 4.(b)(1) and (2). Applicant merely addressed the argument against the rejection of independent claims 1 and 10, which also includes dependent claims 2 and 11 under this requirement while also arguing every other basis of rejection in the last Office Action, but while also separately arguing the rejections of the other dependent claims in this Appeal Brief. The MPEP requires that each set of claims argued separately must separately comply with 37 CFR 41.37(c)(1)(v). This judgement was originally made of record on March 13, 2007 and then withdrawn in a conversation by Applicant's attorney with the examiner on April 12, 2007. However, more rigorous administrative standards have been enforced by the Board of Patent Appeals in recent months. Therefore, the Office believes that it is in Applicant's interest for expediting the appeals process to meet all the detailed requirements of 37 CFR 41.37(c)(1)(v) as explained above.

Date of Deposit: <u>September 7, 2007</u>
I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent Office, Petitions (Fax No. (571) 273-8300), on the date indicated above.
<u>Ginger Yount</u>
Ginger Yount

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Petition Pursuant to 37 C.F.R. § 1.181 Regarding the Notification  
of Non-Compliant Appeal Brief (37 C.F.R. 41.37) Dated August 13, 2007

It is believed that the Notification of Non-Compliant Appeal Brief was issued in error, as the Appeal Brief fully complies with 37 C.F.R. § 41.37. The Summary of the Claimed Subject Matter section of the Appeal Brief is set forth on pages 2 and 3 of the Appeal Brief, which provided a concise explanation of the subject matter defined in *each* of the *independent* claims involved in the appeal, and which refers to the specification by page and line number and to the drawing by reference characters.

The Notification does not indicate that the concise explanation provided for the *independent* claims were improper. Rather, the Notification indicated that a concise explanation should also have been provided for each dependent claim argued separately in the Argument section of the Appeal Brief. It is believed that this requirement is in error.

37 C.F.R. § 41.37(c)(1)(v) specifies the following (emphasis added):

A concise explanation of the subject matter defined in each of the *independent* claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each *independent* claim involved in the appeal and for each *dependent* claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every *means plus function* and *step plus function* as permitted by 35 U.S.C. 112, **sixth paragraph**, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The first part of the provision above specifies that a concise explanation of the subject matter defined in each of the *independent* claims involved in the appeal should be provided that refer to the specification by page and line number, and to the drawing by reference characters. The Appeal Brief clearly satisfies this requirement in the first part of the provision above.

The second part of the provision cited above provides that for each independent claim involved in the appeal and for each dependent claim argued separately in the Argument section, every *means plus function* and *step plus function* as permitted by 35 U.S.C. § 112, ¶ 6, must be identified and the structure, material or acts described in the specification as corresponding to each *claimed function* of the means or step plus function element must be set forth with reference to the specification by page and line number, and to the drawing by reference characters. Thus, this second part of the provision cited above requires that means or step plus function elements under § 112, ¶ 6, must be identified, and the structure, material or acts described in the

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specification must be set forth with reference to the specification by page and line number, and to the drawing by reference characters.


No claim involved in this appeal contains a means plus function or step plus function element under § 112, ¶ 6. More specifically, no dependent claim argued separately in this appeal recites a means plus function or step plus function element under § 112, ¶ 6. Therefore, the second part of the provision cited above does *not* apply, and thus, the requirement made in the Notification of Non-Compliant Appeal Brief that a summary of claimed subject matter be provided for each dependent claim argued separately is erroneous.

It is respectfully requested that the Notification of Non-Compliant Appeal Brief be withdrawn, and that the Appeal Brief be submitted to the Board for consideration.

The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 08-2025 (10014416-1).

Respectfully submitted,

Date: Sept 7, 2007

  
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